

**COMMITTEE ON THE IMPACT OF
DOMESTIC VIOLENCE AND THE COURTS**
Draft Minutes
May 14, 2013
Arizona State Courts Building
Conference Room 119A/B
1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Emmet Ronan, Chair, Judge Keith D. Barth, Judge Carol Scott Berry, Allison Bones, Ellen R. Brown, Esq., Chief Steven W. Campbell, Joi Davenport, Pegg Derrow, Lynn Fazz (*telephonically*), Gloria Full, Patricia George (proxy for V. Michele Gamez, Esq.), Sonja Burkhalter Gonzales, Judge Joseph Knoblock, Josh Eisenstein (proxy for Patricia Madsen, Esq.), Dana Martinez, Leah Meyers, Judge Wendy Million, Marla Randall (*telephonically*), Kristine Reich, Esq., Captain David Rhodes, Tracey J. Wilkinson

Absent/Excused: Cathy Clarich, Judge Carey Hyatt, Judge Cathleen B. Nichols, Renae Tenney, Det. Eugene Tokosh

Presenters/Guests: Julee Bruno (AOC), Cindy Cook (AOC), Gloria Galeno (Arizona Coalition Against Domestic Violence), Amy Love (AOC), Judge Steven McMurry (Encanto Justice Court), Ariel Rowe (AOC), Patrick Scott (AOC)

AOC Staff: Kay Radwanski (AOC), Julie Graber (AOC), Kymberly Lopez (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the May 14, 2013, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:07 a.m. by the Honorable Emmet Ronan, chair. Judge Ronan welcomed all members and guests. Judge Ronan thanked Judge Wendy Million for chairing the February meeting.

B. Approval of Minutes

The minutes of the February 12, 2013, CIDVC meeting were presented for approval.

Motion: To approve the February 12, 2013, meeting minutes as presented. **Action:** Approve. **Moved by** Judge Joseph Knoblock. **Seconded.** Motion passed unanimously.

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Making the Connection Between Gun Violence and Domestic Violence

Gloria Galeno, Arizona Coalition Against Domestic Violence (AzCADV), presented a summary of an AzCADV special report and fact sheet regarding the connection between gun violence and domestic violence. Because of mass tragedies that occurred recently, many different firearms-related proposals were introduced during the current legislative session. The Gun Control Act of 1994 and 1996 has made it more difficult for domestic

violence defendants to obtain firearms. For example, individuals who are subject to qualifying protective orders or defendants who are convicted of qualifying misdemeanor domestic violence crimes are prohibited from possessing firearms under federal law. However, laws do not require judges to order the surrender of firearms, and police officers can remove firearms only in specific situations. Because of statutory loopholes regarding background checks, approximately 40 percent of firearms purchased by abusers are obtained at gun shows, Ms. Galeno reported. Recommendations from AzCADV include universal background checks and support of any legislation that would keep firearms from those who choose to abuse. Courts can play a role by communicating with other entities and the criminal justice system.

B. Arizona Case Processing Standards -- Protective Orders

Judge Steven McMurry, presiding justice of the peace for Maricopa County, Encanto Justice Court, and Cindy Cook, AOC Case Processing Standards Steering Committee, presented the final recommendations for the case processing standards that are being proposed for Arizona's protective orders. Time standards are important to judges and are a measure of effectiveness.

The proposed standard for an ex parte Order of Protection hearing is for 99 percent of the petitions to be heard within 24 hours of filing. The proposed standard includes cases in which a pre-issuance hearing is scheduled. The Steering Committee recognizes the need for more data, but the committee would like to set the standard as-is and work with it.

The proposed standard for when the order is contested (when the defendant asks for a hearing) is for 90 percent of these cases to be heard within 10 days and 98 percent heard within 30 days.

Member discussion included concerns about the form of measurement used to achieve the percentages. The consensus was that the committee does not want to send the message that it is acceptable to not have ten percent of cases heard within 24 hours.

Motion: To approve the proposed case processing standards as related to protective orders. **Action:** Approve. **Moved by** Allison Bones. **Seconded by** Kristine Reich. Motion passed unanimously.

C. El Mirage Order of Protection Service Pilot Project

Police Chief Steven Campbell, City of El Mirage, discussed a pilot project between the El Mirage Police Department and the El Mirage City Court. The project, begun as a project, is now standard procedure. At a plaintiff's request, the El Mirage City Court will e-mail a protective order it has issued against an El Mirage resident to the police department for service. After the order has been served, the police department will e-mail proof of service back to the court. Since the pilot program began, the number of orders served has increased significantly. This program has created a positive impact by maximizing technology, maximizing accountability, and utilizing the records management system to its fullest extent.

D. Tucson City Court -- Domestic Violence Court Project

On behalf of the Tucson City Court, Judge Wendy Million applied for and received a three-year Court Development Grant from the U.S. Department of Justice, Office on Violence Against Women (OVW). Judge Million showed a video describing the project and spoke about the funding, which will subsidize a docket coordinator, American Sign Language interpreters for victims of domestic violence, and education about domestic violence and teen dating violence for those in the deaf community.

E. OVW Update: DV Summit and Other Projects

Julee Bruno, AOC Education Services Division, provided a report on the DV Summit that took place in March. The event was well attended, with 330 people present. Interest in the summit was high, with an additional 30 additional people on a waiting list. With such a positive response to the training, the agency is looking for ways to find funding to carry this program forward. Another project being funded by the OVW grant includes work on a domestic violence workbook to accompany the bench book that is provided to judges. The grant ends on September 30.

F. Legislative Update

Amy Love, AOC, presented a brief update on DV-related legislation.

HB 2144 – CPS omnibus bill; scheduled for the floor.

HB 2383 - Domestic violence; predominant; aggressor. This bill provides direction to law enforcement. A hostile amendment was attached to the bill. The plan is to take this bill to the floor.

HB2392 - Protective orders; confidential information; injunctions. The Governor has signed this law, which provides that a form used to collect additional information about a defendant for the purposes of serving a protective order is a confidential form, whether in the hands of law enforcement or the courts. The form, called the Service of Process Information Form, was developed by the O'Connor House Order of Protection Task Force.

HB 2517 – Domestic violence; arrest. This bill clarifies that in a DV mandatory arrest, the individual has to be at least 15 years of age.

SB 1072 – Parenting time; relocation of child. This bill has not moved but was recently discussed in a newspaper article.

G. Comments to Petitions to Amend ARPOP Rules

Kay Radwanski, AOC, presented draft comments prepared in response to rule change petitions. The ARPOP Workgroup, which met on April 18, prepared the drafts.

R-13-0002 – Change to Rule 123, Rules of the Supreme Court: In February, the committee authorized Judge Million to file a comment in support in April to meet an early comment deadline. The petition proposes an amendment to Rule 123 that would require that no case information about protective orders can be posted on the Internet. This would put the courts in compliance with the federal law.

The comment period for the following three petitions closes May 21.

R-12-0007 – The petitioner asked for a rule to be stricken from the Arizona Rules of Protective Order Procedure (ARPOP) that currently requires a judicial officer to ask the plaintiff about the defendant's use or access of weapons when the plaintiff is applying for an Injunction Against Harassment (IAH). The Order of Protection (OP) statute states that if a judge finds that the defendant is a credible threat to the plaintiff, the judge can order that weapons be restricted. That language does not appear in A.R.S. § 12-1809, the IAH statute. The statute allows the judge to order any relief necessary to protect the plaintiff. That provision has been interpreted to mean that the judge may restrict weapons on an IAH if the judge believes it is necessary to protect the victim.

When the Supreme Court considered this petition in 2012, the court modified the proposed rule language and left the petition open for comment until May 20, 2013. The Court proposed adding a sentence ("This inquiry shall be made to determine if the defendant poses a credible threat to the physical safety of the plaintiff or other protected persons.") that is the same standard in the OP statute.

The workgroup proposed a brief comment that explains that the standard already exists in the law, which is that the judge can order whatever protection is necessary, including a prohibition on possession of firearms.

Motion: To approve the proposed comment to R-12-0007. **Action:** Approve. **Moved by** Ms. Bones. **Seconded by** Ms. Reich. Motion passed unanimously.

R-13-0023 – The petitioner proposed that Rule 123, Rules of the Supreme Court, be amended to require the Court's standing committees to post draft minutes on the Internet within five business days following a meeting. In response, a comment was drafted explaining that CIDVC is governed by the Arizona Code of Judicial Administration, which has its own public meeting rules. The Code requires draft minutes to be available for public inspection within 20 business days, and there is no requirement that minutes must be posted on the Internet, although this is done as a courtesy to the members and the public. Draft minutes are posted with the next meeting's materials rather than in the minutes archive because the draft minutes have not been approved yet. Once the draft minutes are voted on and approved, they are moved into the minutes archive with the other approved minutes from past meetings.

Motion: To approve the proposed comment to R-12-0023. **Action:** Approve. **Moved by** Chief Campbell. **Seconded by** Judge Keith D. Barth. Motion passed unanimously.

R-13-0029 – The petitioner asked the court to repeal the entire set of ARPOP. The State Bar of Arizona filed a comment in opposition, pointing out that the 1955 case the petitioner relied on in his argument was overturned or superseded by statute and, therefore, is no longer a reliable case. The comment drafted by the ARPOP Workgroup states that the court, under the authority granted by the Arizona Constitution, acted within its authority in making the ARPOP rules. Its rules are valid procedural rules and should remain in effect as written.

Motion: To approve the proposed comment to R-12-0023. **Action:** Approve. **Moved by** Judge Barth. **Seconded by** Joi Davenport. Motion passed unanimously.

Ms. Radwanski will ensure that the comments are filed by the deadline.

H. Language Access Planning

Kay Radwanski, AOC, gave an update on language access in the courts. The information was provided by Carol Mitchell, the AOC's language access specialist, who was unable to attend the meeting. This is the two-year anniversary of the implementation requirements of the language access plans that were mandated by AO 2011-96. Each court was required to submit a written plan on how it would accommodate non-English speakers in its court. Some of the main areas included in the plan were identifying the languages requested in a court's jurisdiction, resources that are available in and out of the courtroom, and education and outreach to ensure that court staff is aware of the plan. The AOC held a mini summit during last year's Judicial Conference to address language access issues, and they designated a session for language access during last October's Court Leadership Conference. A project currently under way is a remote video interpreting pilot project in Yuma County, which also allows two-way American Sign Language as well. Any questions can be directed to Ms. Mitchell.

I. CIDVC Proposals for Next Strategic Agenda

A Strategic Agenda Workgroup was established at the February 2013 meeting to develop ideas for CIDVC to contribute to the Judicial Branch's next strategic agenda. The workgroup met on March 6 to discuss ideas, which were then consolidated into a document that has been forwarded to the AJC Strategic Agenda Workgroup.

J. Protective Order Forms -- Update

Ms. Radwanski provided an update regarding modifications to the protective order forms. In previous meetings, CIDVC had proposed revisions to the protective order forms. Dave Byers, AOC administrative director, signed Administrative Directive 2013-03 in April, and courts must begin using the forms no later than June 3. At the February meeting, David Withey, AOC chief counsel, presented a case called Mahar v. Acuna, Ariz. Ct. App., Div. 2. Mahar noted that the Order of Protection form lacked explicit language that would have made it a qualifying protective order pursuant to 18 USC § 922(g)(8), known as "Brady." CIDVC proposed additional changes to the OP to ensure that it will meet Brady criteria. The form was presented to the Arizona Judicial Council on March 28, and the AJC unanimously approved it. Technical changes to the Notice to Sheriff of Brady Indicator, the Hearing Notice, and the Defendant's Guide Sheet were proposed, and the forms were modified. As these additional changes were staff recommendations, CIDVC did not vote on them. Judge Million is making edits to the bench book that will provide more information for judges about the effect of the OP forms modification and the Brady criteria.

K. Workgroup Reports

Workgroup reports were tabled until the next meeting. A suggestion was made to organize and develop workgroups based on the goals of the next strategic agenda and to focus on education. Therefore, all workgroups are suspended until further discussion takes place.

III. OTHER BUSINESS

A. Call to the Public

No persons from the general public were present.

B. Next Meeting

September 10, 2013

Conference Room 345A/B

Arizona State Courts Building

1501 W. Washington Street

Phoenix, AZ 85007

The meeting adjourned at 1:37p.m.

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